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SPEECH OF Mr. GOODRICH,

IN THE SENATE,

JUN 11 1935

DECEMBER 19TH, 1808,

**ON THE THIRD READING OF THE BILL MAKING FURTHER
PROVISIONS FOR ENFORCING THE EMBARGO.**

MR. PRESIDENT,

This bill making further provision for being intended for exportation, which enforcing the embargo, requires all our came in with the embargo laws, and has attention. We are not on ordinary bu- attended their execution. business. An embargo for an indefinite In all this, sir, I see nothing that is period, over a great country like ours, to conciliate the conflicting opinions and abounding in rich staples and domestic passions of our citizens, and restore con- products, and carrying on in its own cord amongst them. I see nothing that vessels an extensive and profitable will invigorate the public councils, and commerce, is a phenomenon in the civi- resuscitate the dormant spirit and re- lized world. We are about entering on sources of the nation. To me it seems, the second year of this novel measure, that the administration, without present- and even in defiance of the lessons which ing to public view any definite object experience teaches, that without pro- or course, are pressing forward our af- ducing any beneficial results, it is em- fairs into a chaos of inextricable difficul- broiling the choicest interests of the ties. And I cannot but regard this bill nation. On foreign powers it has made as holding a prominent place among the no impression...and its ruinous effects on measures leading on to that unfortunate our own country, we see in the waste of issue. private property and public revenue, This bill bears marks of distrusts, en- in the discontents of our citizens...in the tertained by the government of the peo- perplexed state of the public councils, ple or a considerable portion of them, and the increasing difficulties that are and of the state authorities;...It places fast gathering around the government, the coasting trade under further and vexatious restraints, as well as its general The friends of the embargo say, that regulation under the controul of the Pre- it has been evaded and violated, but sident:—It intrenches on the municipal that when strictly enforced, it will com- pel foreign nations to respect our rights. polity of the states, and the intercourse of Under these impressions, the system is the people in their ordinary business;... to be maintained. To enforce it, the And, what above all will wound the powers of the government are to be put public sentiment, for the accusom- in array throughout our country, espe- ed and mild means of executing the cially in places where discontents are laws by civil process through the tribu- manifested...and an extension is to be nals of justice, it substitutes military given to that system of arbitrary sei- powers to be called out and exercised, zures of vessels, goods, merchandise & not in aid, but in place, of the civil an- domestic products, on suspicion of their authorities.

To shew that this is a correct delineation of the character, principles, and provisions of the bill, I ask, sir, your attention to an elucidation of its most important sections.

Not having had time critically to examine the two first, which have lately been introduced by way of amendment, I pass them without remark, leaving it for gentlemen who may follow, to point out their extravagant and oppressive principles.

This bill, as I before observed to you, sir, subjects the coasting trade to further and vexatious restraints, and places it under the controul of the President.

It is enacted (Section 3.) "It shall not be lawful to put on board any ship, vessel, or boat of any description whatever, any specie or goods, wares or merchandise, either of domestic or foreign growth, produce, or manufacture, and the same is hereby prohibited, unless a permit particularly stating the articles thus to be laden shall have been previously obtained from the collector of the district in which such ship, vessel, or boat may then be, or from a revenue officer especially authorised by the collector to grant such permits; nor unless the lading shall be made under the inspection of the proper revenue officers, nor unless the owner or owners, consignee or factor of such ship, vessel, or boat shall, with the master, having given bond with one or more sureties to the United States in a sum six times the value of the vessel and cargo, that the vessel shall not leave the port without a clearance, nor shall, when leaving the port, proceed to any foreign port or place, nor shall put any article on board of any other vessel; and that the whole cargo shall be re-landed either in the port where the vessel may then be, or in such other of the United States as shall be designated in the clearance. And it shall be lawful for the collectors of the customs to refuse permission to put any cargo on board any such ship, vessel, or boat, whenever in their opinion there is an intention to violate the embargo, or whenever they shall have received in-

structions to that effect by direction of the President of the United States; Provided, that nothing contained in this section shall be construed to extend to any ship, vessel, or boat, uniformly employed in the navigation only of bays, sounds, rivers, and lakes within the jurisdiction of the United States, which shall have obtained a general permission, agreeably to the provisions in the section of this act."

This third Section regulates all that branch of the coasting trade not confined to rivers, bays, sounds and, lakes.

The sum required in the bond is six times the value of vessel and cargo, and, as is said by those well informed, in most cases will amount to fifteen or twenty thousand dollars. It is apprehended, that many coasters will not be able to obtain sureties for that sum. Many of the owners of coasting vessels, are men of moderate property, belonging to the middle class of society in point of wealth, the most numerous and not least meritorious of citizens, whom sudden & adverse changes, and consequent loss of business, first affect and depress.

Should the excessive amount of the bonds drive this description of coasters out of their regular employment and throw it into the hands of competitors of larger capitals, we shall have an additional evil to those growing out of the embargo to deprecate. The coasting trade is nearly ruined already by the destruction of the foreign trade. Both these valuable interests, like the other great interests of a free and commercial people, are interwoven with each other; and, while we are shut out from a commercial intercourse with the rest of the world, the government ought to afford by every facility in its power an encouragement to a commercial intercourse between the states.

The Collectors may refuse permission to put a cargo on board of any ship, vessel or boat specified in this section whenever in their opinion there is an intention to violate the embargo, or whenever they shall have received instructions to that effect by direction of the President of the United States.

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Hereby the Collectors are deputed to be viceroys over commerce in the spheres they occupy under the supremacy of the President. As we shall meet with an analogous provision in a subsequent paragraph, I at present wave further remarks on the dangerous policy of vesting the President with such enormous powers.

The fifth section treats of the trade uniformly carried on in rivers, bays, sounds and lakes. It is there enacted, that the Collectors of the customs be, and they are hereby authorized to grant, under such general instructions as the President of the United States may give to that effect, a general permission to ships, vessels, or boats, whose employment has uniformly been confined to the navigation of bays, sounds, rivers, or lakes within the jurisdiction of the United States, when it can be done without danger of the embargo being violated, to take on board at any time such articles of domestic or foreign growth as may be designated in such general permission or permissions, bond with one or more sureties being previously given to the U. S. by the owner, owners, consignee, or factors of such ship, vessel, or boat, and by the master thereof, in an amount equal to three hundred dollars for each ton of the said vessel, that such vessel shall not, during the time limited in the condition of the bond, depart from any district of the United States without having previously obtained a clearance, nor until the master or commander shall have delivered to the collector or surveyor of the port of departure a manifest of the whole cargo on board, that the said vessel shall not during the time above mentioned, proceed to any other port than that mentioned in her clearance, or put any article on board of any other vessel, or be employed in any foreign trade; and that on every voyage or trip the whole of the cargo shall be landed in a port of the United States within the bay, sound, rivers, or lakes to which the navigation of such vessel is confined.

The amount, of the bond prescribed in this clause, is three hundred dollars for each ton of the vessel; and it is not less objectionable on account of its magnitude than in the case I have just animadverted on, whether compared with the relative abilities of the two classes of coasters on whom the respective provisions operate, or the objects in view; and it is more grievous to the districts of country dependant on the trade and intimately concerned in its prosperity. The navigation of the ocean, we deny, and have long denied to our citizens; that between states is impeded: and I fear we are going on, from time to time, by piece meal, to offer up the trade between districts of the same state at the shrine of our embargo system.

The coasting trade is placed under the regulation of the president by this bill.

1st. Collectors may refuse permission to put a cargo on board of any ship vessel or boat in every case where they have their own personal suspicions, that it is intended for foreign exportation, and in every case which may be comprehended within the scope of any general instructions issued by command of the president. But there is a proviso as to coasting vessels uniformly employed in the navigation of bays, sounds, rivers, and lakes, which shall have obtained a general permission.

2d. General permissions may be granted to the last mentioned vessels, under such general instructions as the president of the United States may give, when it can be done without danger of the embargo being violated, to take on board such articles as may be designated in such general permission or permissions.

By these general instructions, the president may prescribe the kind, and quantity, of exports from, and imports into the individual states, and from and to the particular districts within a state. He may suspend them in part or in whole.

The power of issuing general instructions now proposed to be given to the president by law he exercised in the recess of congress, and in my opinion, without

law. The governour of Massachusetts was authorised to give certificates, or licences for the importation of flour into that state; and, under general instructions from the president, without personal suspicion of his own, the collector at Charleston in South Carolina, detained a vessel; which called forth the independent exercise of the judicial power of the circuit court in that state, to controul the president's instructions. I am sensible, the administration and its friends have an arduous task in executing the embargo: difficulties beset them on every side; and not be overcome by accumulating rigorous penalties, and an extension of the executive power. The power to regulate commerce is vested in congress; and by granting it to the president, do we not transfer to him one of the most important and delicate of the legislative powers? What state would have adopted the constitution, if it had been foreseen that this power would be granted to any man however distinguished by office?

I will in this place notice one or two objectionable clauses in the bill not immediately connected with either of the points I have discussed.

By a clause in the 8th section, it is provided, that in a suit on a bond for not re-landing goods, wares and merchandise, and failing to produce a certificate thereof, capture, distress, or any other accident shall not be given in plea or admitted in evidence in any such suit. The doctrine here assumed, that capture, distress or any other accident shall not be pleaded or given in evidence, infringes the first principles of justice, and involves innocence in the punishment of guilt, together with its disgraceful and ruinous consequences. The crime created by the Bill, is that of a person's clearing out a vessel and cargo for a port in the U. States, and voluntarily going contrary to law, to a foreign port. To a case of capture, or being prevented by the act of God, from reaching the destined port, there can be no pretence of crime. And will congress declare an offence by statute, and deny to a party

accused the right of pleading and giving in evidence the only matter of fact that goes to his exculpation? Of what use is the trial by jury, for ages revered as the palladium of innocence against the oppression of power, if it may thus be narrowed down and perverted? And for what cause is this principle to be introduced? Are courts and juries distrusted? And therefore is it that the established usages and rules of trial are to be abandoned? The secretary of the treasury ('tis said) may remit and mitigate forfeitures and penalties; and he will give relief. So innocence is to sue, as a favour for relief, from penalties and forfeitures awarded to guilt, from a secretary of the treasury, when it is entitled to an acquittal in a court of justice.

It is made lawful by the 7th section of the bill for collectors to withhold a licence or register for a vessel, when sold, unless a bond shall be given by the owner previous to the sale, that such ship or vessel shall not contravene the embargo acts.

This provision infringes an essential right of property, and is as oppressive as it is unjust. Owners of vessels already deprived of their use by an embargo, are to be prevented from disposing of them in payment of their debts, or for other purposes, unless on condition of becoming bound for the good behaviour of all future owners of the vessel, in respect to the embargo acts, as long as they shall continue.

The sections I have considered, principally affect merchants and sea-faring men in their business, at stores, custom-houses, about wharves, ships, and vessels. But other sections take a wider range, and intrench on the ordinary concerns of the great body of the people; by the powers they give for unreasonable and arbitrary searches for, and seizures of their property.

Collectors of the customs throughout the U. States, by the 10th section, are empowered to take into custody, specie, or any articles of domestic growth, or manufacture, under these circumstances...when deposited in unusual places...in unusual quantities...in places where there

is reason to believe they are intended for exportation in vessels, sleighs, or other carriages, or in any manner apparently on their way towards the territories of foreign nations, or a place whence such articles are intended to be exported.... And, when taken into custody, they are not permitted to be removed without bonds being given for their being relanded in some place, whence in the opinion of the collector there is no danger of such articles being exported.

Without warrant founded on proof, from suspicion only, may this unbounded licence be exercised. Our houses, heretofore our castles, and the secure abodes of our families, may be thrown open to the visits of collectors to search for and seize our money and goods whenever instigated by suspicion, prejudice, resentment or party spirit.

No place is to be protected; the people may every where be exposed, at home, on the way, and abroad. Species and goods thus seized without warrant, and on suspicion only, are not to be removed unless and until bond with sureties shall be given, for landing or delivering the same in some place of the United States, whence in the opinion of the collector, there shall not be any danger of such articles being exported. These provisions strike at the vital principles of a free government: And are they not contrary to the 4th and 5th articles of Amendments to the Constitution? Are not these searches and seizures, without warrant, on the mere suspicion of a collector, *unreasonable searches and seizures*? And is not a man thereby to be deprived of property without due process of law.

Such is the unprecedented nature and enormous extent of the powers given to collectors by this bill, and by what means, and in what manner, are they to be exercised? By the 11th section it is enacted, "That the powers given to the collectors, either by this or any other act respecting the embargo, to detain any vessel, or to take into their custody any articles for the purpose of preventing violations of the embargo, shall be exercised in conformity with such instructions as the President may give,

and such general rules as he may prescribe for that purpose, made in pursuance of the powers aforesaid; which instructions and general rules the collectors shall be bound to obey: nor shall they be liable to any action, suit, or judgment on account of any detention of vessel, or for having taken articles into their custody in conformity with such instructions and general rules."

Here presidential instructions receive their last seal and stamp of Authority.... They are made binding on collectors; and, for acts done in pursuance of those instructions, they are to be irresponsible.

These instructions, according to the terms of the bill are to become the supreme law of the land, and obligatory on the courts of the United States and of the states. It may be said, that, to render them authoritative, the instructions must be in pursuance of the powers granted by the bill to the collectors, and that they are mere executive directions given for the purpose of producing a uniform and systematic course of proceedings among collectors. If indeed this be their object and intendment, why is the clause inserted? Since the establishment of the treasury department, it has been the practice of the secretary of the treasury to issue instructions to subordinate officers; but this favourite embargo, to which all considerations are made to bend, offers the first instance of an attempt to give to them the force of laws. And a critical attention to the section shews, that such is its intendment. Although it is declared, that, to have the effect, of laws, the President's instructions must be in pursuance of the powers granted by the bill to the collectors, it is to be remembered that collectors are to act in particular cases on their discretion, under the President's instructions, which are to be general; and neither the one nor the other are defined or limited by any precise rule. Both are arbitrary within the spheres of their general authorities. And the President's instructions are absolute on the collectors, and attempted to be made absolute on the court for their

indemnity. They are to be issued from the standing army, or militia, and not time to time, as supplementary laws to enforce the embargo. No direction is given by the bill for their being published, while they necessarily will and must have important effects on the rights and interests of our citizens. It would still be some consolation if this unpleasant enquiry might stop here; but we must enter on a more painful duty. I have before asked, by what means are these unprecedented powers to be executed? They are to be executed by military force not to be employed in aid of the civil authority, but in the first instance, in the place, and to the exclusion of the civil authority.

By the 12th section 'it is made lawful for the President of the United States, or such other person as he shall have empowered, to employ such part of the land or naval forces of the United States, or of the militia thereof as may be judged necessary for the purpose, in conformity with the provisions of this and other acts respecting the embargo, of preventing the illegal departure of any ship or vessel, or of detaining, taking possession of, or keeping in custody any ship or vessel, or of taking into custody and guarding any articles of domestic growth, produce, or manufacture, and also for the purpose of preventing and suppressing any armed or riotous assemblage of persons resisting the custom-house officers in the exercise of their duties, or in any manner opposing the execution of the laws laying an embargo, or otherwise violating, or assisting and abetting violations of the same.'

The military may be employed by such person as the President may have empowered. He may designate, at certain places in the states, persons to call out such part of the land or naval forces of the United States, or of the militia as may be judged necessary: Those will be selected who are most convenient and in all respects qualified to act in the scenes to which they may be called. Influence of the senate is to have these appointments the President's agents for issuing requisitions to the standing army, or militia, and not amenable to any tribunal for their conduct. Heretofore a delicate and respectful attention has been paid to the state authorities on this subject. The requisitions of the general government for the militia have been made to the governors of the states. And what reason is there for taking a different course to enforce the embargo?

Under our present system, have not insurrections been suppressed, rebellions quelled, and combinations and resistance against lawful authority overcome by the force of the General Government in co-operation with the State Governments? Is not the authority of the Marshall's competent to the execution of the laws? I see no cause for these arrays of the military throughout the country, and the unrestrained license that is to be given to its operations. It is a fundamental principle of a free government, that the military be kept in subordination to the civil powers, and never be put in motion 'till those be found incompetent to preserve the public peace and authority. But by the provisions of this bill, these Presidential agents may call out the standing army or militia, or part of them to follow in the collector's train, to seize specie and goods, in houses, stores, and elsewhere, and generally for executing the embargo laws. And even the public peace, so far as respects the suppressing armed and riotous assemblages of persons resisting the custom-house officers in the exercise of their duties, it would seem can no longer be confided to the states... and it is thought necessary to surround custom-house officers with bands of the standing army, or militia.

The bill before us is bottomed on a report of the secretary of the treasury... How often were his strenuous remonstrances, and those of the chairman of the committee who reported the bill, (Mr. Giles) formerly heard against the extension of executive patronage and influence? the interference of the general government in the local polity of the states, and the ordinary concerns of the people? and above all against standing

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armies? Then no such executive perogatives were claimed as this bill contains; no such attempts made as here are made for intrenchments on the internal polity of the states, and the ordinary concerns of the people, and then, our army, small in comparison with its present establishment, was kept aloof from the affairs of the state, and the persons and property of the citizens. Our country was happy, prosperous, and respected. The present crisis is portentous.... Internal disquiets will not be healed, nor public sentiment controuled by precipitate and rash measures. It is time for the public councils to pause. This bill, sir, ought not to pass. It strikes at the

vital principles of our republican system. It proposes to place the country in a time of peace under military law, the first appearance of which ought here to be resisted with all our talents, and efforts. It proposes to introduce a military despotism, to which freemen can never submit, and which can never govern, except by terror and carnage.

NOTE.—Subsequent to the delivery of this speech, the bill was recommitted and the second section expunged, and modifications were made in others, without essentially changing its most objectionable principles and provisions.